IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

R.S.A. No.2577 of 2004
Date of Decision:01.11.2007

Amrik Singh and others **.....Appellants**

Vs.

Sarabjit Kaur and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Arun Jain, Advocate with Mr. Amit Jain, Advocate for the appellants.

****

Rajesh Bindal, J.

The plaintiffs are in second appeal before this Court against concurrent finding of fact by both the Courts below whereby suit filed by them for declaration claiming them to be the owners and in possession of half share of the property in dispute by way of adverse possession and further restraining the respondents from interfering in their possession.

At the very outset, learned counsel for the appellants had not been able to dispute that in terms of settled position of law by this Court in **Bhim Singh and others v. Zile Singh and others,** 2006(3) RCR (Civil) 97, a person in alleged possession of immovable property was not entitled to file a suit for declaration claiming the ownership thereof on the plea of adverse possession as the same could be raised only as a defence in the suit for possession. Once the legal position on the issue is settled by the judgment of this Court, I do not find any substantial question of law arises in the present appeal as the suit of the appellant/ plaintiff itself will not be maintainable. Accordingly, the same is dismissed.

At this stage, learned counsel for the appellants submitted that in the suit filed by the respondents, the appellants had taken the plea of adverse possession in defence. With regard to the same, it is made clear that in the present appeal, the claim of the appellants for having become owners of the property by way of adverse possession is not being considered on merits for the reason that they were not entitled to file a suit for the same.

November 01, 2007 **(RAJESH BINDAL)**
renu **JUDGE**